



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

RADER FISHMAN & GRAUER PLLC
LION BUILDING
1233 20TH STREET N.W., SUITE 501
WASHINGTON, DC 20036

COPY MAILED

SEP 17 2007

In re Application of :
Takaharu Kitada :
Application No. 09/665,667 : DECISION ON PETITION
Filed: September 20, 2000 :
Attorney Docket No. SON-1905 :

OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.181, filed April 16, 2007, requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

A Notice of Abandonment was mailed on March 28, 2007, stating that this application is abandoned for failure to take appropriate action in a timely manner after the February 16, 2007, decision of the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated.

Petitioner contends that the holding of abandonment of this application was improper. In this regard, petitioner states that, pursuant to the provisions of 37 CFR 1.304(a), "[a]pplicant has two (2) months from the mail date of the Decision to respond." Therefore, petitioner had up to and including April 16, 2007, within which to take appropriate action. The petition is accompanied by a request for continued examination (RCE), an amendment (submission), and a \$790 fee for the RCE.

The rule at 37 CFR 1.304(a)(1) states:

The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences.

Further, the rule at 37 CFR 1.198 states:

When a decision by the Board of Patent Appeals and Interferences on appeal has become final for judicial review, prosecution of the proceeding before the primary examiner will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 * *

Additionally, attention is directed to MPEP 1214.07 Reopening of Prosecution, which states:

Sometimes an amendment is filed after the Board's decision which does not carry into effect any recommendation made by the Board and which presents a new or amended claim or claims. In view of the fact that prosecution is closed, the appellant is not entitled to have such amendment entered as a matter of right. However, if the amendment is submitted with a request for continued examination (RCE) under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e), prosecution of the application will be reopened and the amendment will be entered. See MPEP § 706.07(h), paragraph I.

In view of the above, petitioner is correct that the time period for taking action after the mailing of the Board decision is two (2) months from the February 16, 2007, mailing date thereof. Accordingly, the mailing of the Notice of Abandonment on March 28, 2007, was premature as the period for reply to the Board decision had not yet expired. Additionally, the appropriate reply to continue prosecution in the form of an RCE, \$790 fee therefor, and an amendment (the submission required by 37 CFR 1.114) were submitted within the two (2) month period for replying to the April 16, 2007, Board decision.

In view of the above, the holding of abandonment is improper. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The Office sincerely apologizes for the inconvenience caused petitioner in this matter.

This application is being referred to Technology Center AU 2876 for processing of the RCE and for taking appropriate action in the normal course of business on the submission under 37 CFR 1.114, filed April 16, 2007.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.

A handwritten signature in cursive script, reading "Kenya A. McLaughlin".

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions